

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES DENNIS KILES,

Defendant.

CR. NO. S-99-0551 EJG

ORDER DENYING REQUEST FOR
EXTENSION OF TIME TO FILE
SECTION 2255 MOTION

Defendant, a federal prisoner proceeding pro se, has filed a request with the Clerk of Court for an extension of time in which to file a motion pursuant to section 2255 of Title 28 of the United States Code. The request has been referred to the undersigned for response. For the reasons that follow, it is denied without prejudice.

Background

Following his convictions, both by jury and pursuant to pleas of guilty, defendant was originally sentenced September 9, 2002 to a term of 264 months imprisonment and 60 months supervised release. His convictions were affirmed but the case

1 was remanded for recalculation of sentence. Defendant was re-
2 sentenced January 9, 2004 to a term of 262 months imprisonment
3 and 60 months supervised release. Defendant, through his
4 attorney, filed an appeal of his sentence and, in propria
5 persona, a motion to correct his sentence. The motion to correct
6 his sentence was denied January 28, 2004. Defendant's appeal of
7 his sentence was denied and the sentence affirmed by the
8 appellate court in a memorandum opinion filed June 14, 2005.

9 Discussion

10 In the instant request defendant says he only just learned
11 of the Ninth Circuit's denial of his appeal, and he asks for an
12 extension of time in which to file a motion for post-conviction
13 relief, pursuant to 28 U.S.C. § 2255. The request is denied
14 without prejudice to renewal. First, it is premature. Motions
15 pursuant to section 2255 of Title 28 must be filed within one
16 year after the conviction is final on appeal. Here, defendant's
17 convictions became final July 6, 2005, the date the mandate was
18 issued by the Ninth Circuit Court of Appeals affirming the
19 convictions. Thus, he has until approximately July 5, 2006 to
20 timely file a section 2255 motion. Second, no request for an
21 extension of time will be considered absent the filing of the
22 motion itself, accompanied by a sworn declaration setting forth
23 the reasons necessary for an extension.

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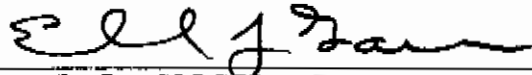
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Conclusion

Defendant's request for an extension of time to file a post-conviction motion pursuant to 28 U.S.C. § 2255 is denied without prejudice to renewal, along the lines and in the manner indicated above.

IT IS SO ORDERED.

Dated: ~~September~~ ^{Oct 4} 4, 2005


EDWARD J. GARCIA, JUDGE
UNITED STATES DISTRICT COURT